D.C.R.E., has been called and says he did not intend to refer to the plaintiff. Mr. Dobb however says that the letter is a complaint about the plaintiff. I cannot accept his evidence on that point. On the 5th February D.C.R.E. writes again, referring to his letter 15th January and the letter of the C.R.E. of 20th January, and repeating his complaints of delay. The plaintiff writes to the head office on the 7th February. There are only 51 men and women on the Recreation Ground and 22 on the Road and that since signing the contract the contractor had changed the labour force six times (i.e. in little more than a month). On the 12th February he wrote again stating that the new arrivals for the Road had decamped, that it had happened three times and as the contractor was paying fair wages the cause was obscure; but there were now 37 on the Road.

A day or so later Mr. Dobb went to the job himself and saw the contractor and the plaintiff together. The plaintiff's account and that of Mr. Dobb are definitely opposed. On the whole I prefer that given by the plaintiff, and do not believe that the contractor was blaming the plaintiff for the delays for that is entirely contrary to the correspondence passing at the time.

Then there is an attempt by Mr. Dobb to show from his personal observations that the plaintiff was not exercising proper supervision. I need not go into it in detail. Major Price says that apart from the labour question his complaints were on minor matters. The fact that 200 feet of drain had to be taken up while producing a delay of a few days is not of major consequence when the fact is that the contract even now has extended much over the contract time under other supervision. Consequently, in my opinion, the plea of justification fails.

The question whether the occasion is privileged is one of difficulty. But after due consideration, I think, the statement though defamatory and not true was *prima facie* "made by the defendant in the conduct of his own affairs in a matter in which his own interest was concerned." (*Gatley*, Cap. XII). An enquiry was made by the plaintiff's solicitor as to what the defendant was intending by the letters of the 18th February and the 25th January, and the defendant was specifically asked whether he confirmed a statement made by another of his employees that plaintiff's services had been terminated. I have to consider whether the statement in the last paragraph of the defendants' letter is or is not wholly unconnected with the subject matter of the enquiry. If the statement is irrelevant to that subject matter, no privilege will attach to the publication of the statement. There is a case cited in the notes in *Gatley* p. 289 of which unfortunately a full report is unavailable, viz:—*Hanton* v. *Hatje*, (1907) 15 Sc. L.T. 535, where privilege was held to attach to a letter written by an employer stating his reasons for not complying with the demand of a solicitor for the payment of wages of a dismissed servant. The occasion is analogous to the one I am now considering.

The defendant's reply is not perhaps as apt and succinct as it might be, but rightly or wrongly he is setting out what he thinks are his rights in the matter viz: that he is entitled in any event to take the plaintiff off that particular contract and put an end to his services when the Plotting Room contract is finalised. It would, I think, be a restriction on the ordinary and necessary rights as to the free expression of opinion, if I were to hold that his statement of his reason was in the circumstances irrelevant or wholly unconnected with the subject matter of the enquiry. I hold therefore that the occasion was privileged.

The plaintiff, however, has not established that the defendant was actuated by any indirect or improper motive in writing the letter.

It is an inadvertent libel.

The defendant will therefore be entitled to judgment in the second cause of action.

As the plaintiff succeeds as to the first cause of action he is entitled to his costs on that cause and the defendant is entitled to the general costs on the libel cause of action but as the plaintiff succeeds on the issue of justification, he is entitled to have the costs of that issue taxed and paid to him. *Harnett* v. *Fisher*, (1927) 1 K.B. 402.

Direct Registrar to be guided by *Brown* v. *Houston*, (1901) 2 K.B. 855.

There will be judgment for the plaintiff for the sum of $1,000 and costs as above.

Judgment accordingly.

Solicitor for the plaintiff—

E. M. Tampoe Phillips.

Solicitors for the defendants—

Sisson & Delay.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

September 10, 1938.

REX v. SALIM BIN JA'AMAT.

[MALACCA CRIMINAL APPEAL No. 14 of 1938]

Malacca Lands Customary Rights—Registration in name of nominee of person not qualified to be a holder—Receipt by registered holder of rents and profits of land—Whether appropriation thereof criminal breach of trust.

Under the Malacca Lands Customary Rights Ordinance a piece of land at Sungei Baru Tengah was held by Khamis bin Mamat who mortgaged it to M.R.M.M. Ramasamy Chettiar. Subsequently it was sold and transferred to one Salim bin Ja'amat who really purchased

the land with money belonging to the Chettiar and as the agent for the Chettiar who was not a qualified customary land holder under section 3 of the Ordinance. The land being rubber land, export coupons permitting the sale and export of rubber produced on the land were issued by the Government to the customary land holder. The customary land holder neglected or refused to hand over these coupons to the Chettiar who thereupon caused a prosecution to be instituted against Salim bin Ja'amat for criminal breach of trust in respect of a coupon given for the export of 10 katties of rubber.

Held, that there had been no property or beneficial interest in the subject matter of the charge in any person other than the accused and there had not been an entrustment of any tangible property of the Chettiar to the accused, or any dishonest conversion of such property.

Obiter, if the objects of the transaction between the Chettiar and Salim bin Ja'amat were illegal and for the purpose of defeating the statute so that land (which was by the Ordinance restricted to the use and benefit of a specific class of persons) was being taken and used by persons not of that specific class then *semble* a criminal offence, namely, furnishing false information to a public officer must have been committed either by the transferor or transferee.

Semble also, that the chettiar by so making use of Salim bin Ja'amat as his nominee to hold the land had been aiding and abetting Salim bin Ja'amat in giving false information to the Collector who under s. 13 of the Ordinance had to be satisfied that a transfer has taken place between the parties then appearing before him.

Semble also, that there had been an agreement to commit an illegal act and therefore a criminal conspiracy at common law and that under the Penal Code an offence would appear to have been committed, namely, abetment by conspiracy under s. 107 of the Penal Code.

CRIMINAL APPEAL.

W. F. Zehnder for appellant.

F. R. N. J. Massey for respondent.

The arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

HORNE, J.—The appellant was convicted in the District Court Malacca for having as a servant of the prosecutor committed criminal breach of trust of a ten katti rubber coupon. He was fined $30 or in the alternative one month's Rigorous Imprisonment.

He now appeals against the conviction.

The prosecutor is a money-lender and, not being a Malay domiciled in Malacca, he is not entitled to be a customary landholder under the Malacca Lands Customary Rights Ordinance (Cap. 125). He is the real respondent in this appeal, for the prosecution was, in fact, if not in form, a private prosecution. The appellant is a Malay domiciled in Malacca.

According to the evidence of the prosecution witnesses, the appellant was first employed by a firm M.R.M.M. Ramasamy Chettiar and was paid $12 a month "and Mukim Extracts were put in his name." In all, at various times between 1931 and 1938, twenty-five to thirty lots of customary land have been put in the name of the appellant.

One plot of 2¾ acres, at Sungei Baru Tengah, was held by Khamis bin Mamat who under the provisions of Cap: 125 mortgaged it to M.R.M.M. Ramasamy Chettiar for $200 on 8th September, 1930, and in 1931 it was, according to the Register, transferred to Salim bin Ja'amat for $250 on 5th October 1931.

In respect of this plot which is called E.M.R. 1511, Ramasamy Chettiar stated in his evidence:—

> "We came by this land on the 5th October, 1931. This land was the property of Khamis bin Mamat. He owed us money and we got him to sell it to us under the name of Salim (appellant) for $250. We had a mortgage on the land. The purchase money was all our money."

This statement is just another way of saying that Khamis surrendered the land to the Chettiar. If this description of the transaction is true then a very serious inroad is being made into the system of tenure established or preserved by the Ordinance. In fact the system appears to be undergoing a steady and persistent destruction.

It is to be noted that it is not alleged that the appellant has ever had actual possession of any of these plots of land. He has, however, with the aid of money borrowed from the same Chettiars, who are now prosecuting him, acquired some other plots and given a statutory mortgage under Cap: 125 to them. It is also stated that for his $12 per month the appellant does some odd jobs, but, as far as the evidence goes, the sole work of the appellant is to be a nominee or a "dummy" for the Chettiars. In pursuance of this scheme, after becoming the registered customary landholder, the appellant takes out in his own name a "Licence to treat and store rubber," deposits this with the Chettiars, and at their request takes this licence to the Rubber Restriction Officer and receives from him the coupons issued in respect of the particular holding of which he is the registered customary land-holder; and upon receipt of the coupons hands them over to the chettiar in question.

During the period in question the original chettiar firm which first began to employ or use the appellant in these transactions has divided and two other firms created, and each firm pays $6 a month or credits the appellant in account at irregular intervals. The lands in question were also divided between the two firms.

Up to 1934 the chettiars with their own labour tapped the rubber trees on E.M.R. 1511 and sold the rubber produced, the appellant taking no part in such work. In 1934 when the rubber restriction scheme came into force the further work of obtaining the licence and the coupons fell to be performed by the appellant.

The Chettiar cannot obtain the licence to treat and store, nor the coupons, because he is not and cannot become a customary landholder.

When a person is charged with criminal dishonesty as a servant, e.g. theft, criminal misappropriation, criminal breach of trust, it must be shewn that the accused was a servant, and even if there is no legally binding contract upon the servant yet so long as he performs the duties requested he will come under the category of a servant. Further, if a servant receives property on his employers' account and embezzles it he may be convicted though his employers had no legal title to the property: *Richard Beacall*, 1 C. & P. 454. But if the objects of the service are wholly illegal and are for the purpose of defeating a statute, so that, as in this case, land, which is by the statute or Ordinance restricted to the use and benefit of a specific class of persons, is being taken and used by persons not of that specific class, then it appears to me, that in the course of this service a criminal offence viz. furnishing false information to a public officer must have been committed either by the transferor or transferee and the objects of the service are, at least indirectly, of a criminal character. I should hesitate before saying, upon the evidence given, that there is a criminal conspiracy; but I do not think it would be going too far to say that the chettiars, by making use of the appellant in the way they have, are aiding and abetting the appellant in giving false information to the Collector, who under Section 13 of the Ordinance (Cap. 125), has to be satisfied that a transfer has taken place, between the parties then appearing before him. Section 12 provides for an open and public transfer, with witnesses to identify the parties. Section 19 forbids any person to be in possession without giving notice of the acquisition of possession.

Clearly there is an agreement between the appellant and the respondent to deceive the Collector and cause him to make an entry in the Register. At the very least the respondent by acquiring possession of customary land or the profits thereof as purchaser, mortgagee or otherwise, however" (and he claims to have acquired a beneficial interest for that is the foundation of the breach of trust) has failed to give notice under Section 19 (1) and has made himself liable to a fine under Section 19(3). Is not then this particular service, viz. acting as a nominee, which the appellant is alleged to be bound to render to the respondent, forbidden by law? I cannot say it is specifically forbidden, but on a reasonable construction of the Customary Lands Ordinance (Cap. 125) it is impliedly forbidden. Consequently it may be said that there is an agreement to commit an illegal act and therefore a criminal conspiracy at common law. Apparently, however, under the Penal Code the offence would appear to be abetment by conspiracy under Section 107 of the Penal Code.

The facts in that case appear to me to be very different from the facts in *Rex* v. *Beacall*, 1 C. & P. 310 & 454, where although the employers were not permitted by statute to receive money for the particular purpose in question there, the money was clearly received by Beacall as a servant and for and on account of the employer. Similarly in *Queen* v. *Stainer*, L.R. 1 C.C.R. 230, where although some of the rules of the Friendly Society (the employer) were in restraint of trade and contrary to public policy, it was held that there was nothing criminal in the Society's objects or operations. The employers in that case clearly had beneficial interest in their funds which Stainer had embezzled.

In both these cases the contract was capable of legal enforcement. But in this case the agreement between the appellant and the respondent could not be enforced. No action could be maintained upon it for it arises *ex turpi causa*. The express purpose of it is to carry into effect something which is contrary to the Ordinance Cap. 125. Further, in this case a criminal offence is involved, or at least the probability of its commission is so high as to justify me in saying that even if the objects of the service are not criminal, their operation has been criminal.

It is of course arguable that a holder or a person legally capable of being registered as a customary landholder may make a personal contract with any other person and bind himself by that contract. Yet it is also clear that he can create no legally enforceable trust of the land. If the nominee of the 25 to 30 plots dies the chettiar will get nothing, for the customary land will be subject to transmission under Section 11 of the Ordinance (Cap. 125).

Assuming an absence of any criminality from the arrangement between the appellant and respondent and that the services are merely illegal, then the evidence, in my opinion, does not show that there has been an " entrustment." As was said by Lord Haldane in *Lake* v. *Simmons*, 96 L.J. K.B. 621 at p. 625 " 'Entrusted' is not necessarily a term of law. It may have different implications in different contexts. In its most general significance all it imports is a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all."

In *The King* v. *Grubb*, (1915) 2 K.B. 683, a case of fraudulent conversion of property by a person entrusted with property, it was laid down that " if a person has obtained or assumed the control of the property of another under circum-

stances whereby he *becomes* entrusted, or whereby his receipt *becomes* a receipt for or on account of another and he fraudulently converts it he commits an offence under Section 1 of the Larceny Act 1901."

In *Ratanlal*—Law of Crimes 14th Edition p. 981, it is stated that "The property in respect of which criminal breach of trust can be committed must be either the property of some person other than the person accused, or the beneficial interest in or ownership of it must be in some other person, and the offender must hold such property on trust for such other person or in some way for his benefit." (*Hok Cheng & Co.* v. *Tha Ka Do* (1913) 7 L.B.R. 16 a case unobtainable here).

In *Rex* v. *Kavena Ismail Sahib*, (1937) S.S. L.R. 260; 6 M.L.J. 242, it was held that a mortgagor of, and in possession of, a tongkang could not be convicted of criminal breach of trust of the tongkang. "In the opinion of the Court 'property' for the purpose of Section 405 of the Penal Code must be something tangible and a mere incorporeal right does not fall within the purview of the section."

The question therefore in this case is whether there is any "property": tangible property of the respondent "entrusted" to the appellant. Clearly the respondent never entrusted the appellant with the land. The latter was never in charge of it and has taken no produce from the land. The case of *Durge Tewari* v. *Emperor*, 36 Calcutta 758, quoted in argument has no application here. In that case the appellants being set to guard land and to inform the proprietor when the crop was ready to be reaped, cut the crop themselves and converted it; and it was held that they had been entrusted with the crop. But here the land and the growing crop is never entrusted to the appellant.

It appears to me that the respondent can acquire no "property" in respect of which criminal breach of trust can be committed in the coupon, until he acquires the coupon. A mere contractual right to have the coupon delivered to him is not sufficiently tangible to be the subject of a criminal breach of trust, even if the contract can be legally enforced, though in my opinion the Court will not enforce the contract for, apart from criminality, it is made for the express purpose of defeating the Ordinance (Cap. 125). Persons who contract trust the other party to the contract to perform the contract. In that sense the respondent trusted the appellant. But he did not entrust any of his property to the appellant. The respondent cannot use the land unless the appellant allows him, he cannot make use of the coupon until the appellant obtains it and delivers it to him. Such rights as he may have, very doubtful ones in this case, all depend upon the appellant performing his part of their bargain. There is no receipt of the coupon for and on account of the respondent for the respondent is compelled to treat the appellant as a principal and allow him to receive the coupon in his capacity as customary landholder, otherwise the respondent has no hope at all of obtaining it. At the most there is a breach of contract but no breach of trust under Section 405.

The learned District Judge came to the conclusion that the appellant "had committed a dishonest breach of trust reposed in him." In so doing he takes a far wider view of the section than the words can bear. There must be an entrustment of tangible property of a person other than the accused and a dishonest conversion of such property in order to warrant a conviction. In this case it is impossible to say that there is any property or beneficial interest in the subject matter of the charge in any person other than the accused. The appeal is allowed and the conviction quashed.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

June 23, 1938.

REX v. LIEW HOW YEONG & ORS.

[SINGAPORE MAGISTRATE'S APPEAL No. 34 of 1938]

Chandu Revenue Ordinance, (Cap. 223), s. 11, sub-s. 3 (d)—Possession of non-Government Chandu.

Five persons were accused of being in possession of certain non-Government chandu found in an otherwise unused room at No. 30 Jervois Road, Singapore. The ostensible tenant of No. 30 Jervois Road was No. 4 accused, but he was not otherwise in occupation of the room where the chandu was found. He and Nos. 1, 3 and 5 accused each occupied separate quarters at that address and No. 2 accused was a servant and resided in the servant's quarters. The chandu belonged to and originated from a business known as "Great Southern Trading Co." proved to be carried on in Singapore by No. 1 accused as a cloak for the importation of non-Government chandu. The 1st accused was convicted. The 2nd accused, as a mere servant at the said private residence, was acquitted and Nos. 3, 4 and 5 accused were convicted.

Held, that in order to establish joint possession in the first, third, fourth and fifth accused it was necessary to establish that all were concerned in the business of "Great Southern Trading Co." Unless Nos. 3, 4 and 5 were known to be jointly engaged in the illegal venture with No. 1 it could not be said that they were in possession of the particular parcel of chandu found at the house they lived in. No adverse inference ought to be drawn against Nos. 3, 4 and 5 because No. 1 gave evidence which while seeking to exculpate Nos. 3, 4 and 5 did not add anything to the prosecution's evidence. When several accused are charged with jointly having possession of